

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

RIN 3133-AD18

Revisions to the Official Sign Indicating Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising the official sign indicating a credit union's share accounts are insured by the NCUA to reflect recent share insurance increases and by including a statement that NCUA-insured share accounts are backed by the full faith and credit of the United States Government. This rule is required to comply with the Federal Deposit Insurance Reform Act of 2005 (Reform Act) and the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (Conforming Amendments Act).

DATES: This final rule is effective immediately upon publication but there are delayed compliance dates. A credit union must replace the old version of the official sign with the revised official sign displayed below at required locations such as each station or window where the credit union normally receives insured

funds or deposits in its principal place of business and all of its branches and on its internet page where it accepts deposits or opens accounts by May 22, 2007.

A credit union must replace the old version of the official sign with the revised official sign on each document where it has chosen to include the official sign, including advertisements, marketing and promotional materials, disclosures, and others by November 23, 2007.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address, or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Reform Act and Conforming Amendments Act, respectively Pub. L. No. 109-171 and Pub. L. No. 109-173, amended the share insurance provisions of the Federal Credit Union Act in a number of ways, including increasing share insurance coverage for certain accounts. 12 U.S.C. 1781-1790d. In March 2006, NCUA issued an interim final rule to implement many of those statutory amendments. 71 FR 14631 (March 23, 2006). Additionally, the Conforming Amendments Act also requires that NCUA's official sign, relating to the insurance of share accounts, state that share accounts insured by NCUA, through the National Credit Union Share Insurance Fund, are backed by the full faith and credit of the United States government. Section 740.4 of NCUA's regulations

establishes the content and physical appearance of the official sign and dictates where insured credit unions must display the sign. In June 2006, NCUA issued a proposed rule to amend §740.4 to comply with statutory requirements and §740.4 and §740.5 to reflect recent share insurance increases. 71 FR 36719 (June 28, 2006).

The Conforming Amendments Act also imposes a penalty on an insured credit union that violates any statutory or regulatory provision related to the official sign. Specifically, an insured credit union is subject to a penalty of up to \$100 a day for every day it is in violation of statutory or regulatory requirements. The proposal reflected this statutory provision in §740.4.

B. Initial Supply of New Signs and Compliance Dates

In the proposed rule, NCUA stated it would provide all insured credit unions with an initial supply of the revised official sign with a blue background and white lettering at no cost to credit unions and would make a downloadable graphic available on the agency website for credit unions to use on their websites.

NCUA intends to ship the signs immediately following Board approval of this final rule, and credit unions should receive their signs around the time of the official publication of this rule.

NCUA did not suggest a compliance date for replacing the official sign at teller windows, on websites, or on advertisements. Rather, NCUA asked for comments on whether 60 days after receiving the signs from NCUA would be a reasonable period for credit unions to come into compliance. As discussed in detail in the summary of comments section below, NCUA is setting two separate compliance dates for credit unions to incorporate the revised official sign. A credit union will have up to six months from the effective date of this rule to replace old signs with revised signs at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches and on its internet page where it accepts deposits or opens accounts. Credit unions will have up to one year from the effective date of the rule to exhaust or otherwise dispose of their existing supplies of other materials on which the official sign appears and replace them with materials containing the revised official sign.

C. Summary of Comments

NCUA received a total of eighty-one comments regarding the proposed rule from eight credit union trade associations, thirty-five federal credit unions, thirty-six state credit unions and two individuals who did not identify the credit unions with which they are associated.

The vast majority of commenters focused on the compliance date of the rule. Most commenters indicated the rule creates two separate tasks credit unions need to perform to comply and that each should have its own compliance date. For example, about half the commenters believed 60 days is a reasonable time period to replace the old sign with the revised sign at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches and on its internet page where it accepts deposits or opens accounts. A few of these commenters also noted additional time would be preferable. Seventeen commenters stated more than 60 days is necessary to comply and a number of them suggested six months and one suggested a year. NCUA does not wish to overburden any credit union in this regard. Accordingly, NCUA will allow up to six months for credit unions to comply with this aspect of the rule.

Also, commenters explained that, in addition to placing the official sign where required by regulation, such as at teller windows and on web pages, credit unions also voluntarily use the official sign on a vast array of materials they provide to members. Commenters noted these materials include marketing and promotional materials, disclosures, envelopes, statement paper, lobby flyers and posters, membership agreements, and other documents.

Seventy-seven commenters agreed that credit unions need a longer compliance period to deal with revising these materials. The great majority of these

commenters expressed two main themes about revising the materials. They noted it could take a long time to redesign and reprint them and the expense of doing so could be high and cause budgetary problems, especially for smaller credit unions. They explained credit unions usually purchase these kinds of materials in bulk to lower their costs. As a result, credit unions may have large inventories that could last for a year for which they have already paid. They suggested NCUA permit credit unions to exhaust their existing supplies of materials before being required to replace them with materials containing the revised official sign. Some suggested specific time frames, ranging from six months to a number of years and others left it more open-ended, suggesting whenever the existing inventory is exhausted. Many also noted that members would not be adversely affected by an extended compliance period. NCUA acknowledges the commenters' concerns. Accordingly, NCUA will permit credit unions one year from the effective date to comply with this aspect of the final rule.

Nine commenters suggested adding additional language to the sign to specifically reference the \$250,000 coverage for certain retirement accounts. Three commenters suggested adding the word "are" to the sign between the words "savings" and "federally" for readability. Nine commenters expressed concern and disapproval for the statutorily mandated penalty of up to \$100 per day for not complying with official sign requirements. The familiar design and limited language of the sign is intended to instill confidence in members that their

funds are insured by the NCUA and backed by the full faith and credit of the United States Government. NCUA believes that adding too much additional information to a small sign detracts from that simple and easily understood message, lessens the legibility of the sign in certain media, and could actually confuse members into thinking they have more insurance coverage than they do. NCUA believes the redesigned sign strikes a balance between providing accurate and sufficient information with the logistical need for the sign to be brief. Finally, the redesigned sign parallels the language on the Federal Deposit Insurance Corporation's newly redesigned sign and reflects cooperation between federal agencies. The \$100 per day penalty for not complying with Part 740 is statutory and beyond NCUA's ability to change. NCUA believes it has accommodated commenters' concerns about the penalty, however, by setting compliance dates far enough in the future to allow credit unions ample time to comply.

D. Technical Clarification

NCUA is amending §740.4(b)(2) to ensure its policy that a credit union may use the color scheme of its choice regarding the official sign is clearly reflected. 68 FR 23381, 23382 (May 2, 2003). The current regulation contains language that could be read to prohibit a credit union from using signs in colors other than those provided to it by NCUA at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and

all of its branches and on its internet page where it accepts deposits or opens accounts. That language is removed to make clear a credit union may use signs in different colors in those locations. Additionally, NCUA reiterates that a credit union also may alter the official sign's font sizes to ensure it is legible and visually prominent on a web page. 68 FR 23381 (May 2, 2003). Credit unions may do the same on other documents where they have chosen to include the official sign in connection with the official advertising statement or for other purposes not required by Part 740. A credit union may not alter the font size of the official sign as provided by NCUA for placement at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches. Also, the depiction of the sign published in the proposal inadvertently omitted an interior border surrounding the language of the sign. The depiction below includes that border but does not make any substantive changes.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions (those under ten million dollars in assets). This rule clarifies that share accounts insured by NCUA are backed by the full faith and credit of the United States Government. It establishes reasonable compliance dates and

is structured to minimize any regulatory burden to ensure it will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - - Assessment
of Federal Regulations and Policies on Families

The NCUA has determined that this rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so this rule may be reviewed.

List of Subjects

12 CFR part 740

Advertisements, Credit unions.

By the National Credit Union Administration Board on November 16, 2006.

Mary F. Rupp

Secretary of the Board

For the reasons discussed above, NCUA is amending 12 CFR part 740 as follows:

PART 740 – ACCURACY OF ADVERTISING AND NOTICE OF INSURED STATUS

1. The authority citation for part 740 continues to read as follows:

Authority: 12 U.S.C. 1766, 1781, 1789.

2. Section 740.4 is amended by revising the figure in paragraph (b) introductory text, by revising paragraph (b)(2) and by adding new paragraph (f) to read as follows:

§ 740.4 Requirements for the official sign.

* * * * *

(b) * * *

Your savings federally insured to at least \$100,000
and backed by the full faith and credit of the United States Government

NCUA

National Credit Union Administration, a U.S. Government Agency

(1) * * *

(2) An insured credit union may purchase signs from commercial suppliers or develop its own in any color scheme so long as they are legible and otherwise comply with this part. A credit union may alter the font size of the official sign to make it legible on its internet page and on documents it provides to its members including advertisements, but it may not do so on signs to be placed at each station or window where the credit union normally receives insured funds or deposits in its principal place of business and all of its branches.

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(f) An insured credit union that fails to comply with Section 205(a) of the Federal Credit Union Act regarding the official sign, 12 U.S.C. 1785(a), or any requirement in this part is subject to a penalty of up to \$100 per day.

3. Section 740.5(c)(11) is amended by removing “of \$100,000” and adding in its place “insurance amount”.